

**DRENSKY TECHNOLOGIES**  
**STANDARD TRADING TERMS & CONDITIONS**

The Customer's attention is drawn to the clauses hereof which exclude or limit the Company's liability and those which require the Customer to indemnify the Company in certain circumstances.

**1. DEFINITIONS AND APPLICATION**

**1.1** In these Conditions:

"Company" Is DRENSKY TECHNOLOGIES CC and DRENSKY ENERGY (PTY) LTD and /or its agents; assigns and subsidiaries.

"Customer" Means any person /company whose name appears on the invoice/quotation/credit application or in any other circumstances, any person or persons at whose request or on whose behalf the Company undertakes to supply goods, do any business or provide any service or on whose behalf the Company undertakes any business or provides advice, information or services.

**1.2 (a)** Subject to sub-paragraph (b) below, all and any activities of the Company in the course of business whether gratuitous or not are undertaken subject to these Conditions.

**(b)** If any legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by the Company of any of its rights or indemnities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions be repugnant to such legislation to any extent such part shall as regards such business be overridden to that extent and no further.

**1.3** The Customer warrants that he/she is either the Customer or the authorized Agent of the Owner and also that he/she is accepting these Conditions not only for himself/herself but also as Agent for and on behalf of the Customer.

**2. THE COMPANY**

**2.1 (a)** Subject to sub-clause (b) hereof, the Company shall have a general lien on all goods and equipment relating to goods in its possession, custody or control for all sums due at any time from the Customer or Owner, and shall be entitled to sell or dispose of such goods or equipment as Agent for and at the expense of the Customer and apply the proceeds in or towards the payment of such sums on 28 days' notice in writing to the Customer. Upon accounting to the Customer for any balance remaining after payment of any sum due to the Company and the costs of sale or disposal the Company shall be discharged of any liability whatsoever in respect of the goods or equipment.

**(b)** When the goods are liable to perish or deteriorate, the Company's right to sell or dispose of the goods shall arise immediately upon any sum becoming due to the Company subject only to the Company taking reasonable steps to bring to the Customer's attention its intention of selling or disposing of the goods before doing so.

**2.2** Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall not pass such advice or information onto any Third Party without the Company's written agreement. The Customer shall indemnify the Company against all loss and damage suffered as a consequence of any breach of this Condition by the Customer.

### **3. THE CUSTOMER**

**3.1** The Customer warrants:

**(a)** that the description and particulars of any goods or equipment furnished by or on behalf of the Customer are full and accurate.

**(b)** that all goods or equipment have been properly and sufficiently prepared, packed, stowed, labelled and/or marked, and that the preparation, packing, stowage, labelling and marking are appropriate to any operations or transactions affecting the goods and the characteristics of the goods or equipment.

**3.2** The Customer undertakes that no claim shall be made against any Director, Servant, or Employee of the Company which imposes or attempts to impose upon them any liability in connection with any services which are the subject of these Conditions and if any such claim should nevertheless be made, to indemnify the Company against all consequences thereof.

**3.3** The Customer shall save harmless and keep the Company indemnified from and against:-

**(a)** All liability, loss, damage, costs and expenses whatsoever (including without prejudice to the generality of the foregoing, all duties, taxes, imposts, levies, deposits and outlays of whatsoever nature levied by any authority in relation to the goods) arising out of the Company acting in accordance with the Customer's instructions or arising from any breach by the Customer of any Warranty contained in these Conditions or from the negligence of the Customer, and

**(b)** Without derogation from sub-clause (a) above, any liability assumed or incurred by the Company when by reason of carrying out the Customer's instructions the Company has reasonably become liable or may become liable to any other party, and

(c) All claims, costs and demands whatsoever and by whomsoever made or preferred in excess of the liability of the Company under the terms of these Conditions regardless whether such claims, costs and demands arise from or in connection with the negligence or breach of duty of the Company, its Servants, Sub-Contractors or Agents, and

**3.4 (a)** The Customer shall pay to the Company in cash or as otherwise agreed all sums immediately when due without reduction or deferment on account of any claim, counterclaim or set-off.

(b) In respect of all sums which are overdue the Customer shall be liable to pay to the Company interest calculated at 10.5% above the prevailing base rate of the South African Reserve Bank

#### **4. LIABILITY AND LIMITATION**

**4.1** The Company shall perform its duties with a reasonable degree of care, diligence, skill and judgment.

**4.2** The Company shall be relieved of liability for any loss or damage to the goods and equipment supplied as well as any equipment belonging to the Customer or its customer as the case may be if and to the extent that such loss or damage is caused by:-

(a) power surge or drop or disruption in electricity supply, strike, lock-out, stoppage or restraint of labour, the consequences of which the Company is unable to avoid by the exercise of reasonable diligence;

(b) any cause or event which the Company is unable to avoid and the consequences whereof the Company is unable to prevent by the exercise of reasonable diligence.

**4.3 (a)** Any claim by the Customer against the Company arising in respect of any service or equipment provided for the Customer or which the Company has undertaken to provide shall be made in writing and notified to the Company within fourteen (14) days of the date upon which the Customer became or should have become aware of any event or occurrence alleged to give rise to such claim and any claim not made and notified as aforesaid shall be deemed to be waived and absolutely barred except where the Customer can show that it was impossible for him/her to comply with this time limit and that he/she has made the claim as soon as it was reasonably possible for him/her to do so.

(b) Notwithstanding the provisions of sub-paragraph (a) above the Company shall in any event be discharged of all liability whatsoever howsoever arising in respect of any service provided for the Customer or which the Company has undertaken to provide unless legal action be brought and written notice thereof given to the

Company within two (2) years from the date of the event or occurrence alleged to give rise to a cause of action against the Company.

**5. THESE TERMS AND CONDITIONS TO PREVAIL**

The only basis upon which the Company is prepared to do business with the Customer is that, notwithstanding anything in any acceptance, order or other document or agreement to the contrary, these terms and conditions shall constitute the sole terms of the agreement between the Company and the Customer and shall operate in respect of any and all business between them.

**6. NO VARIATIONS OR AMENDMENTS**

This agreement constitutes the whole agreement between the Customer and the Company relating to the subject matter hereof and no amendment to, cancellation or variation of this agreement or any waiver or indulgence which would otherwise give rise to estoppel, shall be binding unless recorded in a written document signed by an authorised representative of the Company.

**7. QUOTATIONS AND ORDERS**

Any quotation given is not an offer by the Company to sell the goods or equipment but constitutes an invitation by the Company to the Customer to do business with the Company and it may be revoked at any time by the Company. The Company may accept or reject in whole or in part any order placed upon it by the Customer and a contractual obligation to supply shall only exist if, after acceptance of the quotation, the Company confirms that a contract exists or tenders supply of goods or equipment. An order may not be withdrawn until accepted or rejected by the Company.

**8. PURCHASE PRICE AND PAYMENT**

**8.1** Orders are accepted by the Company only on the basis that the prices charged will be those ruling at the date of dispatch of the goods or equipment, unless otherwise expressly stated. A copy of the Company's ruling prices from time to time may be obtained from it.

**8.2** The Customer shall be obliged to pay to the Company in addition to the contract price herein -

**(a)** the amount of any tax (including VAT), duty or other charge (including an amount equal to any withholding tax) of any nature whatsoever imposed by any law or regulation AND any other additional costs of any nature whatsoever arising due

to factors beyond the control of the Company. For example, the Company may increase the purchase price in respect of any goods supplied in order to make provision for any increases in costs.

- 8.3** Any expense incurred by the Company at the instance of the Customer including those incurred in modifying or otherwise altering or making additions to the design, quantities or specifications for goods or equipment, shall be paid in addition to the relevant purchase price.
- 8.4** The purchase price payable to the Company in respect of any goods shall be payable by the Customer to the Company, at the Company's head office or at such other place as the Company may direct from time to time, in cash AND in South African Rands.
- 8.5** The purchase price and delivery is ex-works and unless specifically provided to the contrary, excludes insurance and freight, which shall be paid directly by the Customer or reimbursed to the Company, at the Company's instance. The Customer may not withhold payment nor set off any amount due to the Customer by the Company. Goods repaired may be sold by the Company to defray repair/storage costs if not collected within thirty (30) days of repair.

## **9. RISK**

The risk in any relevant goods shall pass to the Customer on delivery thereof by the Company to the Customer.

## **10. DELIVERY**

Any delivery date indicated by the Company shall be regarded as the estimated date of delivery and is not binding on the Company. The Customer shall accept delivery whenever it is tendered. The Customer shall inspect all goods or equipment upon delivery and shall endorse the delivery note as to any missing or damaged goods or equipment, failing which any claim for missing or damaged goods or equipment is waived. Delays in delivery due to any act or omission of the Customer shall render it liable to pay storage costs. If the Company agrees to engage a third party to transport the goods, it is hereby authorised to engage a third party on the Customer's behalf.

## **11. WARRANTIES AND GUARANTEES**

- 11.1** No Warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth in this agreement shall be binding on the Company. The Customer irrevocably waiving any right (common law or Otherwise) it may have to rely thereon,

and the goods or equipment are purchased on the basis that they are taken "as is" and with the exclusion of all common law and other remedies.

- 11.2** To the extent that goods or equipment supplied and installed by the Company are in any way defective, the Customer shall be entitled, within three (3) months of the delivery of the relevant goods or equipment, to claim the replacement or repair of goods or equipment to eliminate any defect in workmanship or materials found to be due exclusively to any acts or omissions on the part of the Company, in the Company's sole opinion (which shall be binding on the Customer), of which defects the Company shall have been notified in writing by the Customer within ten (10) days after the defect arises. The Company shall not be responsible for costs incurred in dismantling or fitting replacement parts or reassembling the goods or equipment. The Company's liability shall be limited on return to the Company of the goods or equipment or parts thereof, to what is set out above.
- 11.3** To be valid a claim in terms of the guarantee as set out in clause 11.2 it must be in writing and must be supported by the original tax invoice.
- 11.4** Save as aforesaid, the Company shall have no liability if the Company does not warrant that the goods or equipment will be fit for any purposes as stipulated by the Customer.
- 11.5** The Company shall have no liability in terms of clause 11.2 if repairs or modifications have been made by persons other than the Company; if any goods or equipment are operated with any equipment or part not specifically supplied or approved in writing by the Company; or the goods or equipment were not operated, installed or maintained properly and in accordance with the Company's instruction.
- 11.6** Repairs or replacements are not subject to a new guarantee.

## **12. HANDLING FEE**

The Company may levy a fee of 10% of the purchase price of goods returned to and accepted by the Company.

## **13. OWNERSHIP**

Ownership (or in the case of software, the non-exclusive and non-transferable right to use the object code) of any goods or equipment shall not pass to the Customer, notwithstanding installation, until the purchase price and interest has been paid. Accession shall not apply. Copyright and title to all intellectual rights in all operating software and documentation remains vested in the Company.

## **14. INSURANCE**

The Company may require the Customer, at its own expense and at any time, to insure the goods or equipment with a reputable insurer and thereafter keep the goods insured until paid for in full and the Customer hereby cedes such policy to the Company.

## **15. BREACH**

**15.1** Subject to clause 15.2, if the Customer breaches any of the terms or conditions hereof or any other agreement with the Company or fails to pay any amount when due or commits any act of insolvency or endeavors to compromise generally with its creditors or does or causes to be done anything which may prejudice the Company's rights hereunder or at all, or allows any judgement against it to remain unsatisfied or is placed into provisional or final liquidation or sequestration or judicial management or receivership, the Company shall have the right, without prejudice to any other right, to elect to -

**(a)** treat as immediately due and payable all amounts which would otherwise only become due and payable in the future;

**(b)** cancel this agreement and retake possession of any of the goods or equipment sold.

**15.2** The Company has no obligation to perform in terms hereof while the Customer has not performed all its obligations. No claim will arise against the Company unless the Customer has afforded it 30 days written notice for the rectification of the cause. Amount due and payable to the Company shall be determined and proven by a certificate issued by the Company.

## **16. NO CESSION**

The Customer shall not be entitled to cede or assign any rights and/or obligations to any third party.

## **17. COSTS**

The Customer shall be liable for all costs incurred by the Company in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges legal costs on an attorney and own client scale whether incurred

prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction thereof.

**18. EXEMPTION AND INDEMNITY**

The Customer shall have no claim of any nature whatsoever whether for damages, reduction of purchase price, cancellation or otherwise, against the Company, its servants or agents, in respect of any loss or damage sustained by the Customer of any nature.

**19. SEVERABILITY**

Each paragraph or clause in this agreement is severable the others and if any are found by any competent court to be defective or unenforceable for any reason whatever, the remaining paragraphs or clauses shall be of full force and effect.

**20. FORCE MAJEURE**

Any transaction is subject to cancellation by the Company due to force majeure from any cause beyond the control of the Company, including, inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbances, riot, state of emergency, strike, lockout, or other labour disputes, fire, flood, drought or legislation.

**21. INTEREST**

The Customer shall pay interest to the Company on all amounts not paid on due date at 10.5% above the prevailing base rate of the South African Reserve Bank or the highest rate permissible by law, compounded monthly in arrears, reckoned from the due date until date of final payment.